



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Columbia Property Management
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC-MT, CNR, RP, FFT

Introduction

This hearing was convened as a result of the Tenants' Applications for Dispute Resolution ("Applications") under the *Residential Tenancy Act* ("Act") for:

- more time to apply to cancel a One Month Notice to End Tenancy for Cause dated December 17, 2021 ("One Month Notice");
- an Order cancelling the One Month Notice;
- an Order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent dated January 6, 2022 ("10 Day Notice");
- an Order for repairs to the unit or property, having contacted the landlord in writing to make repairs, but they have not been completed; and
- to recover the \$100.00 cost of their Application filing fees.

An agent for the Landlord, K.M. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. Another agent of the Landlord sat in on the hearing for training purposes only. No one attended on behalf of the Tenants. The teleconference phone line remained open for over ten minutes and was monitored throughout this time. The only persons to call into the hearing were the Agents, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only people on the call, besides me, were the Agent and her trainee.

I explained the hearing process to the Agent and gave her an opportunity to ask questions about it. During the hearing the Agent was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written

evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Rule 7.1 states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Respondent Landlord’s Agents and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 9:30 a.m. on March 31, 2022, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to reapply. The teleconference line remained open for over ten minutes, however, neither the Applicants nor an agent acting on their behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, I **dismiss the Tenants’ Application without leave to reapply**.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the application and if the notice to end tenancy is compliant with section 52 of the Act, as to form and content.

The onus to prove their case is on the person making the claim. In most circumstances this is the person applying to the RTB or dispute resolution. However, in some situations, the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy. As such, the burden of proof is on the Landlord in the matter of the ongoing tenancy.

Preliminary and Procedural Matters

The Tenants provided the Parties’ email addresses in the Application, and the Agent confirmed the Landlord’s email address in the hearing. The Agent also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Agent that pursuant to Rule 7.4, I would only consider the Landlord’s written or documentary evidence to which the Agent pointed or

directed me in the hearing. I also advised the Agent that she is not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recovery of unpaid rent pursuant to section 55 (1.1)?

Background and Evidence

The Agent confirmed the following details of the tenancy, which are set out in the Parties' tenancy agreement. The fixed-term tenancy began on May 1, 2021, and is scheduled to run to April 30, 2022, with a monthly rent of \$1,950.00, due on the first day of each month. The Agent confirmed that the Tenants paid the Landlord a security deposit of \$975.00, and a pet damage deposit of \$975.00, and that the Landlord still holds these deposits in full.

The Landlord submitted copies of the One Month Notice and the 10 Day Notice that were served to the Tenants. The Agent confirmed that the following details were contained in the One Month Notice. It was signed and dated December 17, 2021, it has the rental unit address, it was served by posting it on the rental unit door on December 17, 2021, with an effective vacancy date of January 31, 2022, and it was served on the grounds that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

In the "Details of Events" section of the One Month Notice, the Landlord wrote that the Tenants repeatedly breached the tenancy agreement term that does not allow smoking in the rental unit. The Landlord said they sent warnings about this behaviour on September 3, 2021, September 24, 2021, and November 19, 2021. with the latter warning cautioning the Tenants of the possibility of eviction, should it happen again. The Landlord indicated having received a complaint about the Tenants' smoking on December 17, 2021, and they issued the One Month Notice.

The 10 Day Notice was signed and dated January 6, 2022, it has the rental unit address, it was served by attaching it to the rental unit door on January 7, 2022, with an effective vacancy date of January 25, 2022, and it was served on the grounds that the

Tenants failed to pay the Landlord \$1,950.00 in rent when it was owed to the Landlord on January 1, 2022.

The Agent said that the Tenants have not paid any rent for January through March 2022. She confirmed that the Tenants owe the Landlord \$5850.00, as of the date of the hearing. This debt is set out in the following chart:

Date Rent Due	Amount Owing	Amount Received	Amount Owing
Jan 2022	\$1950.00	\$0.00	\$1950.00
Feb 2022	\$1950.00	\$0.00	\$1950.00
Mar 2022	\$1950.00	\$0.00	\$1950.00
	TOTAL		\$5850.00

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act states: “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.” There is no evidence before me that the Tenants had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

Section 46 of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Section 46 also states that the 10 Day Notice must comply with section 52, as to form and content.

Section 55 (1.1) states that if a tenant applies to dispute a landlord’s notice to end a tenancy, then the director must grant an order requiring the payment of the unpaid rent by the tenant, if the following circumstances apply:

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice;

I find that the 10 Day Notice complies with section 52 of the Act, as to form and content. Further, I uphold the Landlord's 10 Day Notice to end the tenancy. Accordingly, I find that the Landlord is eligible for an order of possession and a monetary order pursuant to the Tenants' Applications, and sections 46, 55, and 67 of the Act.

I award the Landlord with **\$5,850.00** from the Tenants in unpaid rent, pursuant to sections 46 and 55 of the Act. I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's security deposit of **\$975.00** and their **\$975.00** pet damage deposit in partial satisfaction of the Landlord's monetary claim. I authorize the Landlord to retain these deposits in partial satisfaction of the monetary award. Pursuant to section 67 of the Act, I grant the Landlord a **Monetary Order** of **\$3,900.00** for the balance owed by the Tenants to the Landlord, after deducting the security and pet damage deposits.

Pursuant to section 55 of the Act, I award the Landlord with an **Order of Possession** of the rental unit, **effective two days after deemed service** of the Order to the Tenants.

Conclusion

The Tenants are unsuccessful in their Applications, as they did not attend the participatory hearing to present the merits of their claims. The Landlord's Agents did attend the hearing, and provided sufficient evidence to prove the validity of the 10 Day Notice and to meet their burden of proof on a balance of probabilities.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible.

Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I grant the Landlord a Monetary Order under section 67 of the Act from the Tenants of **\$3,900.00**. This Order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 31, 2022

Residential Tenancy Branch